

Crimes (Restorative Justice) Sexual and Family Violence Offences Guidelines 2018*

Disallowable Instrument DI2018-266

made under the

Crimes (Restorative Justice) Act 2004, s61 (Restorative Justice Guideline)

1. Name of Instrument

The instrument is the *Crimes (Restorative Justice) Sexual and Family Violence Offences Guidelines 2018*.

2. Commencement

This instrument commences on the phase 3 application day.

3. Declaration

I make this guideline outlining the procedures (in the Schedule) for the management of restorative justice for sexual and family violence offences.

4. Definitions

“phase 3 application day” - see section 16(5) of the *Crimes (Restorative Justice) Act 2004*

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*Name amended under Legislation Act, s 60

Schedule - Restorative Justice Sexual and Family Violence Offences Guideline 2018

1 Introduction

Section 61 of the *Crimes (Restorative Justice) Act 2004* (the Act) provides that the Director-General may issue guidelines outlining procedures for the management of restorative justice in relation to the referral of offences and decision-making about referrals, the conduct of restorative justice (RJ) conferences, the monitoring of progress of restorative justice including compliance with restorative justice agreements; and any other aspect of the administration of the Act.

The RJ scheme under the Act is implemented in the ACT through the Restorative Justice Unit (RJU) within the Justice and Community Safety Directorate (JACS). The staff of the RJU in accordance with delegations from the Director-General of JACS, undertake functions under the Act, including:

- deciding if restorative justice is suitable for an offence (s 32)
- deciding if restorative justice is suitable for a victim (s 34)
- deciding if restorative justice is suitable for a parent¹ of a child victim (s 35)
- deciding if restorative justice is suitable for an offender (s 36)
- calling a restorative justice conference (ss 39 and 41)
- convening a restorative justice conference (s 46)
- deciding to discontinue a restorative justice conference (s 47)
- explaining the effect of a restorative justice agreement (s 53)
- monitoring compliance with a restorative justice agreement (s 57)

The application of restorative justice for sexual offences and family violence offences requires appropriate procedures to ensure an effective and safe process for participants. It is acknowledged that sexual assault can occur separate to, or in a family violence context.

This guideline is intended to outline, for referring entities and members of the community, how RJ will be applied and how particular components of the process will be emphasised in the management of sexual and family violence offences. It is not an operational manual for convenors.

¹ *parent*, of a child, means a person with parental responsibility for the child within the meaning of the [Children and Young People Act 2008](#), division 1.3.2 (Parental responsibility).

2 Background

RJ is a voluntary scheme which provides a way for the people most affected by a crime to come together in a dialogue-based process which allows:

- victims an opportunity to talk about how the offence has affected them and others close to them;
- offenders an opportunity to accept responsibility for their actions;
- victims, offenders and supporters an opportunity to discuss the harm and what needs to be done to repair that harm; and
- offenders an opportunity to repair the harm done by the offence.

There is no obligation on a victim, a parent of a child victim or an offender to take part in RJ or to continue to take part in RJ after it has started.

The objects of the Act, set out in section 6, are to:

- a) enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- b) set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- c) ensure that the interests of victims of offences are given high priority in the administration of restorative justice under the Act;
- d) enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- e) enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

The rights of participants are safeguarded in the following ways:

- participants, following a referral to RJ, are advised they can seek further advice in relation to their participation in RJ, including the inclusion of tasks in an RJ agreement. Where there is legal complexity in relation to a matter referred to RJ, they will be strongly encouraged to seek such advice.
- limitations on protection of their privacy in relation to information that they disclose in, and for the purpose of, the restorative justice process will be explained to participants (in accordance with the Territory Privacy Principles as laid out in the *Information Privacy Act 2014*).

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- participants' informed consent to participate in RJ must be established before RJ can proceed
- participants will be informed that support will be sourced for them if they do not have existing supports to promote their emotional and psychological safety throughout the process
- the nature, purpose and effect of RJ agreements must be explained in ways that can be readily understood and
- the RJ agreement must not require an offender to do anything that would be unlawful or detain the offender or be degrading or humiliating to the offender or cause distress to the offender.

RJ is integrated into and supplements the formal criminal justice system. The integration of restorative justice in the criminal justice system allows the potential fulfilment of multiple justice outcomes for victims of all offences. Less serious offences may be referred at any stage, from the point of apprehension to the period when an offender may be serving a sentence. Serious offences may only be referred once the offender has pled or been found guilty of the offence².

All RJU employees are subject to obligations arising from working with children and young people and vulnerable people generally. All convenors have a current 'working with vulnerable people' certification. All RJU employees are subject to public authority obligations under the *Human Rights Act 2004*. This means that RJU employees must act compatibly with human rights and give proper consideration to relevant human rights in making decisions.

All RJU employees are mandated reporters of child sexual abuse and non-accidental injury under s356 of the *Children and Young People Act, 2008* (CYP Act). Disclosures of past or current undisclosed sexual abuse or non-accidental injury to a child by an offender invoke an obligation on the RJ employee to report to the director-general (unless exceptions apply as provided for in s357 of the CYP Act).

Participants will be advised that convenors have a mandated obligation to report child sexual abuse and non-accidental injury. Participants will also be advised as to the potential admissibility of evidence of statements about serious offences (other than the referred offence) made in a RJ conference or agreement (s59 (1) and the potential for a court to consider, in sentencing an offender, a statement made by the offender during a RJ conference or agreement about an offence (serious or less serious).

² Serious offences are those that attract a maximum imprisonment term of over ten years for personal offences and over 14 years for property offences.

Evidence of a statement made by a participant during a RJ conference or in an agreement, in relation to an offence threatened to be committed after the time of the conference or RJ agreement by anyone (including the conference offender), may be admissible in court in a proceeding in relation to such an offence, if it is ultimately committed. Any disclosures of intent to harm another identified person during the course of the RJ process which leads an RJ employee to form a reasonable belief that this will occur will be reported to the appropriate authorities.

These limitations to the privacy of disclosures are an important consideration for phase three where offenders will be encouraged to acknowledge patterns of harmful behaviour for sexual and family violence offences. While the obligation to report child sexual abuse and non-accidental injury is absolute, managing the tension between encouraging disclosures of prior offending behaviour (other than child abuse) to promote accountability and the need to meet legislative privacy and reporting requirements is an acknowledged challenge.

Not all offenders will have a pattern of criminal or coercive behaviour. When it is evident that the offender has engaged in prior harmful or precursor behaviour, the RJU will be encouraging offenders to disclose patterns of harmful behaviour during suitability assessment and preparation. For example, in a family violence referral for assault, the offender will be encouraged to take responsibility for non-offence FV behaviours such as emotional abuse and financial control. Another example is a rapist who has a long criminal history of perpetrating sexual offences against random victims. The offender will be expected to acknowledge such patterns of offending. Participants will be advised of the possible consequences of making specific and detailed disclosures of prior unreported offences in the conference or agreement phase.

Participants will also be encouraged to seek independent advice, including where appropriate, legal advice as to any impacts such disclosures might have on them and their situation. Appropriate warnings will be provided prior to statements being made in conferences or in agreements.

3 Eligibility

For less serious sexual or family violence offences to be referred by the court at section 27(4), prior to a plea or finding of guilt, the court may make a court referral order but must consider that exceptional circumstances exist to justify the referral.

For any less serious family violence or sexual offence referred to RJ prior to a plea or finding of guilt, the director-general (RJ) must also be satisfied that exceptional circumstances exist. The director-general (RJ) considers that exceptional circumstances may generally be inferred if the matter was a first-time offence and the circumstances of the offence were considered genuinely low risk and low complexity.

4 Referral

The Act allows for criminal offences to be referred for RJ by referring entities only. Referring entities are those agencies and decision makers who are eligible to refer offences for RJ. The Act contains a list of referring entities at s 22. They are ACT Policing, the Office for Children, Youth and Families, the Office of the Director of Public Prosecutions, the ACT Magistrates Court, including the Galambany Court and the Childrens Court, the ACT Supreme Court, the director-general (RJ), ACT Corrective Services, the Sentence Administration Board and the Victims of Crime Commissioner. The RJU can also refer to itself.

The Act also identifies the stage of the criminal justice process at which the referring entities may refer offences for restorative justice (Table 22).

A referring entity may consider whether it is appropriate to refer an offence for RJ before considering other action (s7(1)). However, if an offence is referred for RJ, the referral is to have no effect on any other action or proposed action in relation to the offence or the offender by the referring entity (s7(2)).

Division 6.4 s28A allows for referrals at post-sentence that do not require offender notification prior to referral where it would not be appropriate or reasonably practicable for the offender to have such knowledge. This provision offers an extra layer of safety for victims, especially those who have some relationship with their offender vastly reducing risk of coercion or influence at the earliest stage. Referrals at all other points of the criminal justice system require offenders to be informed of and agree to a referral. For matters at other points in the system victims can be directed to the RJU or make their own enquiries, receive information about RJ processes discretely and where it is safe and appropriate to do so, the Director-General RJ can assist to prompt a referral from the relevant referring entity such as ACT Policing, DPP or the Courts.

5 Restorative Justice process for sexual or family violence offences

RJ works with victims or their chosen substitutes to establish safe communication with those responsible for committing a sexual or family violence offence against them through a RJ conference. The purpose of this communication is for the offending to be named, for the offender to demonstrate responsibility and for the victim to have the opportunity to voice the consequences and impacts of the offending for them and others. It is recognised that sometimes survivors of sexual assault and family violence will continue contact with the person who offended against them and this must be taken into account. Suitability considerations include scanning for any potential power imbalances between the parties and remaining

vigilant for such imbalances and demonstrations of coercive behaviour throughout the RJ process.

There are three main stages of RJ processes once a referral has been made by a referring entity:

- the assessment, commitment and preparation;
- the conference itself;
- the post-conference period, including monitoring of any RJ agreement.

6 Quality assurance in the restorative justice process

Convenors in the RJU receive RJ group conferencing training from a qualified practitioner, clinical supervision once a month and line management from a supervisor with sound knowledge and experience of RJ operations.

Advanced skills for phase three matters include the application of a more thorough initial and ongoing risk assessment including:

- a formal written risk assessment;
- ensuring that any relevant specialist risk assessment tool is applied.

Appropriate measures to manage the higher level of risk in such cases include:

- use of co-facilitation including a more experienced RJ facilitator
- use of supporters with specialist knowledge in the relevant area;
- close multi-agency collaboration;
- close contact with a case supervisor.

Careful judgement is used as to what information may be given to one participant about another, or to anyone else, given the implications for their emotional and physical safety, especially where covert behaviour may appear harmless but have clear meaning to the person harmed and person responsible.

All staff in the RJU, including administrative staff will be using procedures that protect the information and safety of participants.

7 Stage 1 - Assessment of suitability

The first and critical stage post-referral involves the assessment of whether RJ is suitable for the offence and potential participants.

When an offence is referred to RJ by a referring entity the director-general must decide whether RJ is suitable for the offence (s 32 of the Act), suitable for an eligible victim (s 34), suitable for an eligible parent of a child victim (s 35) and suitable for an offender (s 36). In practice, these assessments are undertaken by a convenor and

signed off by the RJU manager or senior convenors in the manager's absence, as delegates of the director-general in the RJU.

In deciding whether restorative justice is suitable for the offence, section 33 requires that the RJU consider the following -

- any government or administrative **policy** relating to the treatment of offences of the relevant kind;
- the **nature of the offence**, including the level of harm caused by or violence involved in its commission or alleged commission;
- the **appropriateness of restorative justice at the current stage** of the criminal justice process in relation to the offence;
- any **potential power imbalance** between the people who are to take part in restorative justice for the offence; and
- the **physical and psychological safety** of anyone who is to take part in restorative justice for the offence.

7.1 Considering relevant policy

The RJU will provide flexible, non-punitive, community oriented, culturally competent, trauma informed RJ responses for victims and perpetrators of family violence and sexual offences and their respective supporters in a process that seeks to address the unique needs of its participants while holding the interests of victims and the accountability of offenders as high priorities.

The Act reflects the seriousness of sexual and family violence offences in its legislation by requiring exceptional circumstances to exist for the calling of conferences prior to admissions or findings of guilt.

RJ principles have strong alignments with human rights principles. Victims of family violence and sexual offences, offenders and their personal supporters who agree to participate in an RJ process will be brought together in a carefully managed environment only where it is safe to do so adhering to a general principle of 'doing no further harm'.

The RJU is represented on the Sexual Assault Reform Program. The RJU will work collaboratively with other agencies to ensure victims are aware of their options and offered a quality RJ conferencing process at all points of the criminal justice system, when appropriate. The Sexual Assault Reform Program's main objectives are to improve the processes and support for victims of sexual offences as they progress through the criminal justice system; reduce attrition in sexual offence matters in the criminal justice system; and improve the coordination and collaboration of agencies involved in the criminal justice system. Offering RJ for sexual offences assists the

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fulfilment of these objectives as it provides trauma-informed justice options for victims of sexual offences without substituting for counselling interventions or the formal criminal justice system.

The Office of the Coordinator General for Safer Families was established in the ACT in 2016 and has led key strategic and service development initiatives. After surveying stakeholders, an 'Initial Insights Report' published in February, 2018 found: a lot of people and communities who experience violence do not necessarily recognise it as violence; a gendered system excludes some people and communities; some victims are incredibly isolated; communities are seeking culturally competent and trauma informed services that work with the whole family; fragmented services make it harder for people to achieve safety, and; many approaches to male offenders are punitive and not focused on change.

A robust system, it notes, would focus equal effort on preventing violence from occurring, intervening early, responding to crisis and provision of post-crisis therapeutic support to help people recover. RJ offers to collaborate closely with stakeholders and other agencies to improve quality and integrated approaches. RJ has a role to play, especially in early intervention and post-crisis therapeutic support in recovery for those who choose it and where it is safe to do so. RJ aids in the naming of abuse, condemnation of abuse and the acknowledgment of the impacts of such offences offering victims and offenders a way to have a voice in a justice process that includes their community of care.

Policy related to the treatment of family violence offences is also supported by the work of the Family Violence Intervention Program (FVIP). This body includes government and non-government organisations that comprise a coordinating committee and FV case tracking function which provides intelligence and oversight of matters that are being prosecuted. The RJU is a represented member agency of the FVIP so that once phase three begins optimal awareness of risk information will be facilitated which will be vital for determining the suitability of a matter.

The FVIP aims for its agencies to work together cooperatively and effectively, to maximise safety and protection for victims of family violence, to provide opportunities for offender accountability and rehabilitation, and to seek continual improvement in responses to family violence in the ACT. The FVIP helps maintain an awareness of the seriousness of family violence in the community and across criminal justice agencies and institutions which provide responses.

The Children and Young People Act 2008 confers legislative responsibility to Child and Youth Protection Services in the ACT for facilitating and coordinating services across government for the care and protection of children and young people believed to be at risk of harm. CYPS aims to promote diversion; protection, restoration, transition and permanency and trauma informed practice. RJ also aims to further opportunities for diversion, restoration/reintegration and uses trauma informed

processes to help achieve the overall vision of children and young people being safe, strong and connected. The RJU will be working closely with CYPS in the best interests of young people and will seek to share information related to risk and safety. This will be an expectation when the young person is in the guardianship of CYPS.

7.2 Considering the nature of the offence

Sexual and family violence offences are understood to be heavily permeated with cultural attitudes and beliefs that result in exertion of power and control by one person over another – most commonly but not always related to male entitlement and female subjugation. RJ employees are suitably trained and have a sound understanding of the causes and reinforcers of sexual and family violence among individuals, families, communities, agencies and/or institutions.

Sexual or family violence can be misunderstood, tolerated or even condoned in our communities. A RJ process will be conducted in ways that promote a consciousness of human rights. RJ processes will safely and fairly deliver the aims of the Act. This is especially true when vulnerable people are being considered for participation.

It is understood that a gendered approach to responding to sexual and family violence may exclude some people and communities and for this reason, RJ convenors will approach every referral with an open mind to the unique needs of individual participants and their communities.

Examples of vulnerable people include those impacted by trauma, women, children and young people, the elderly, Aboriginal and Torres Strait Islanders, culturally and linguistically diverse people, members of the LGBTIQ community, people with physical and/or cognitive disabilities and people with mental illness.

Matters involving vulnerable participants require convenors to understand relevant related legislation, (for example, the *Children and Young Person's Act 2008* when a matter involves a child or young person) the person's unique needs as well as their vulnerability-related issues. Convenors must consider suitable support connections and safety assurance for all participants. The inclusion of specialists who understand sexual and family violence and can provide informed support where appropriate is another key emphasis in RJ phase three.

Clear operational procedures and training will allow convenors to adequately identify power imbalance, understand trauma impacts and ensure the participant has sufficient capacity for free choice and expression in the process. The capacity for a person's participation may be enhanced by supporters. The director-general (RJ) must be convinced of the participant's genuine empowerment and participation in the process and the good prospect for their interests and needs to be met or the matter may not be considered suitable.

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A broad range of sexual and family violence offences may be referred for RJ³ and a range of factors will influence the impact of an offence on a victim. This includes the victim's relationship to the offender; the extent and severity of multiple types of abuse; the extent of physical harm; the length of time over which abuse has occurred; the responses of family and friends of the victim, the victim's experience of the various systems (health, police, courts etc) and; the personal history of the victim. The added shame and humiliation surrounding sexual abuse or assault further impacts on the ability of victims to speak out and often leaves them suffering in silence and isolation, sometimes for years.

The effects of sexual and or family violence can include psychological, emotional, physical, social, interpersonal and financial consequences. Victims may experience none, some or many of the possible impacts of abuse at different times; it is understood there is no single way a sexual assault or family violence victim should look, feel and act.

Serious offences will only be referred at later points in the criminal justice system and only where the perpetrator has pled or been found guilty in court. Less serious offences may be referred to RJ prior to plea only if the court considers exceptional circumstances exist.

Many offences that fall under the category of 'less serious' may have caused high levels of trauma to a victim. This is especially true for sexual and family violence offences. Further, the existence of coercive and controlling behaviours perpetrated repeatedly by an offender against a victim seriously undermines a victim's freedom and wellbeing. Any one of these behaviours focused on individually, however, may legally be considered a less serious offence or not an offence at all.

The level of harm caused by patterns of coercion and controlling behaviour may therefore be viewed as more dangerous in many circumstances than the level of harm caused by one instance of physical violence. For this reason, the RJU will be screening carefully for signs of coercive and controlling behaviours and regarding these as higher level risks, as well as acknowledging the risks attached to overt criminal offending behaviours of perpetrators.

The many smaller yet insidious behaviours involved in coercion and control usually do not constitute an offence for reporting purposes, yet are important to challenge and can be explored throughout a RJ process, including at conference and agreement phases.

Training undertaken in the RJU informs an understanding and knowledge of the dynamics of sexual and family violence as it affects diverse communities such as the

³ See the *Crimes Act 1900* for a complete list of sexual offences. Apart from breaches of FV protection orders family violence offences are largely determined as such by the relational context of the offending rather than stand alone offences. I.e: a common assault by a husband against a wife is acknowledged as a family violence offence.

elderly, children and young people, the Aboriginal and Torres Strait Islander community, the culturally and linguistically diverse people and LGBTIQ community and people with disabilities.

Operational procedure manuals in the RJU will assist convenors' awareness and appropriate responses across the different types and contexts of offending.

7.3 Considering appropriateness of referral for RJ at current stage

Section 31 (2) (a) of the Act refers to the referring entity's finding of eligibility being generally sufficient for the director-general to be satisfied of the fact of eligibility; but notes at (b) that it does not prevent the director-general from being satisfied that a victim, parent or offender is *not eligible* for restorative justice. There may be instances where the director-general advises a referring entity that a referred matter under consideration is not eligible.

The director-general must be satisfied that exceptional circumstances exist for the calling of a RJ conference in relation to a less serious family violence offence or a less serious sexual offence committed by a young offender or an adult offender *before* the offender pleads guilty to the offence or is found guilty of the offence.

An offence attracting a low penalty (and low subjective impact as disclosed by the victim away from the influence of the offender) combined with an absence of pre-meditation or, a pattern of coercion and controlling behaviours and/or a lack of history of sexual offending, family violence or violence related offences may be considered to constitute 'exceptional circumstances'. A young offender whose matter meets these criteria may be referred to RJ even if their initial response to their apprehension or prosecution for the offence is that they 'do not deny' responsibility for the offence. This is in acknowledgement of the intense shame and denial response that is a common feature of sexual and family violence offences, even those of a less serious nature and the higher probability of their taking responsibility in a setting that is less threatening. Their acceptance of responsibility for the offence however *must* be established in the RJ suitability assessment phase before progressing to conference. Failure to accept responsibility for the offence and for their accountability to a victim would render their matter unsuitable to progress.

When a matter is referred for a less serious offence before the offender has entered a plea or been found guilty, there may not yet be a relevant assessment report. In these cases, the RJU will be assessing risk (using appropriate assessment tools) in order to rule out matters that may be considered too complex or risk laden for an early referral.

(Example: A sexual offence involving a young male over 12 years of age referred by police for a 'non-consensual distribution of images' offence would be assessed using the Juvenile Sex Offender Protocol 2 (J-SOAP II). While there is no reliable tool available to accurately predict sexual reoffending in juveniles, the J-SOAP II provides

good information about the levels of complexity and intervention needs for young males who have sexually offended. A young person referred as a diversion whose J-SOAP II assessment reveals a high complexity of risk issues and needs may prompt the RJU to notify the referring entity that a diversionary-only referral is not suitable at this time.

Note: The use of particular assessment tools by the RJU may change over time in accordance with current research and accepted best practice.

Serious offences may be referred only where the offender pleads guilty to the offence or the offender is found guilty of the offence (whether or not the offender is convicted or sentenced for the offence). See part 5 of the Act for Eligibility criteria.

Victims and their supporters will have their own view on whether an offence should be referred at a particular point in the system. Victims can decline to participate if they feel that an offence is not appropriate for referral at the current stage. A victim may indicate a preference for an offence to be referred to RJ at post-sentence for example, rather than pre-sentence.

7.4 Considering the potential power imbalance

Considerations of power relationships among potential participants in RJ is essential for ensuring a fair and meaningful process and outcomes for victims. This is especially so in matters of sexual and family violence offences. An offender who has committed an offence against a victim has already abused their power. Risk assessment at the referral review stage will ensure that offenders whose motivations remain self-serving, who are manipulating the process and continuing to minimise, victim blame or dominate the process will not be considered suitable for RJ. For a matter to be suitable to progress to conference a convenor must be assured that an offender has acknowledged their misuse of power in the current offence and is also acknowledging any misuse of power repeatedly or routinely. Statements of responsibility will be required from offenders in preparation for calling a conference. These statements do not become a recorded document which could be subpoenaed as evidence of culpability in a court but are a crucial determinant of suitability in RJ (discussed further in the next section around safety). Where offenders persist with victim-blaming, justifications and/or minimisation a matter will not be suitable to proceed.

For required participants, especially vulnerable cohorts, evidence must be secured in the assessment process by the convenor that a person is genuinely consenting to participate and has sufficient capacity to participate safely. This is considered essential for empowerment and positive outcomes at the assessment and preparation stage as well as in conference and beyond.

When considering vulnerability, children and young people's best interests are important to safeguard in the RJ process. Where a child victim is under the age of

10 years, a parent will immediately assume primary victim status for the purpose of eligibility for RJ. It is possible that the views, needs and wishes of young children can be incorporated into RJ processes in consultation with the parent. In each individual child or young person's circumstances, there may be many competing views, including those of more powerful individuals/entities expressed as to what constitutes the 'correct' version of the best interests of that child. Parents of child participants will be encouraged to understand that childhood is a process in which children gradually learn how to make decisions and practice their rights, and families should support children in gradually enhancing their autonomy. To ensure children and young people's needs are addressed, it is important for decision-makers to understand and respect the needs of children and young people to express their wishes and take them into consideration and where possible support them in their own decision-making.

Assessments of capacity for participation in RJ will not carry the same threshold as for legal capacity. If a person, including a young person or member of another vulnerable group, can understand the RJ process and the potential physical and emotional consequences of their participation both in the short and long term then they can make their own decisions. It is a convenor's responsibility to inform the person in language which they can understand, of the nature of participating in RJ and any entering into any proposed agreement including any risks and limitations. If the person demonstrates a capacity to understand the explanation and shows an appreciation of the benefits and risks, the convenor can make a judgement as to the person's competence and seek appropriate personal and professional supports.

Convenors must establish with participants, and their supporters where appropriate, the participant's capacity in relation to ongoing decisions at different points in the RJ process. For example, a vulnerable person's decision to consent to participate in RJ does not assume that they will also understand and consent to a particular agreement task that is suggested in the course of a conference. Sections 32A and 45 respectively make provision for explanation of RJ before consenting to participate and again, before a RJ conference begins.

Supporters (or non-required participants) of victims and offenders must also be assessed for their suitability to participate in ways that assist offenders to take fullest responsibility and assist victims to feel empowered, vindicated and validated. Supporters must not be allowed to wield power in a conference that reduces the required participants' ability to have a voice and/or participate freely.

Assessments of family violence matters or sexual offences where the victim and offender are known to one another will never involve the victim and offender attending pre-conference meetings together. Each will be interviewed, assessed and prepared separately for conference, with respect to their individual and autonomous needs, and the importance of participants feeling safe to freely discuss issues of risk and harm to themselves and/or others. Preparation time will be as long

as participants need to feel ready for conference. Participants are reminded they can step out at any time they feel it is no longer in their interests to proceed.

Note: Where the convenor reasonably considers that significant delay in a conference process was part of a participant's controlling behaviour, the matter may be discontinued.

Including additional and more specialist supports will be a routine feature of RJ in phase three. Where a participant's capacity for meaningful engagement and decision-making is impaired every effort will be made to include supporters with specific expertise, in relation to the particular vulnerability, who can assist the participant to have a voice and make decisions in their own best interests. This may include Aboriginal and Torres Strait Islander cultural supporters, disability advocates and/or mental health supporters. A victim may choose a substitute to represent their interests and needs and participate on their behalf (as per s43 of the [Act](#)) if for any reason they feel unsafe and /or unwilling to participate themselves. The chosen victim substitute becomes a required participant and must also be assessed as suitable to participate in RJ.

When there is insufficient support available for the victim or the offender a matter will not be considered suitable to proceed.

Example: Specialist supporters may include psychologists, counsellors, victim liaison workers, interpreters, culturally relevant persons.

Note: These examples are not exhaustive.

The RJ scheme is flexible and allows a variety of methods of communication for conferencing purposes. Where having a voice is desired by the victim but the victim does not wish to face their offender, many indirect methods for dialogue exist, including having, written, audio and or video recorded messages relayed over time at a pace the victim is comfortable with.

During preparation, efforts will be made to explore potential agreement tasks prior to conference with participants. Participants are encouraged to think about, and where appropriate, seek independent advice including legal advice, about any implications on them and others.

For sexual and family violence matters, agreements will include an optional cooling off period post-conference allowing victims further time to seek advice and to consider the implications of any agreement or component of an agreement.

7.5 Considering the physical and psychological safety of participants

Assessing risks to the physical and psychological safety of victims and participants in the RJ process for sexual and family violence matters includes consideration of

general safety and *conference process-specific* risks. The RJU will work collaboratively, gathering information related to risk from the referring entity and other relevant criminal justice agencies and victim's advocacy agencies. General safety will be established by RJU accessing information, including assessment reports where available from criminal justice agencies.

The director-general (or delegate in the RJU) can ask a referring entity for information about a victim, parent of a victim, offender or anyone else if the information is necessary for the administration of the Act and the entity must do everything reasonable to comply with the request as per s 63 of the [Act](#).

When a matter is referred for a less serious offence before the offender has entered a plea or been found guilty, there may not yet be a relevant assessment report. In these cases, the RJU will be assessing risk (using appropriate assessment tools) in order to rule out matters that may be considered too complex or risk laden for an early or diversionary referral.

Further assessment of conference-specific risks will involve attempts to gain an understanding of the offender's attitude to the offence, to the victim, to the RJ process as well as consideration of other readiness issues, their particular motivations and any barriers to their full and safe participation in RJ.

The involvement of an offender who is only superficially motivated, and or is more concerned with their own needs and interests in the RJ process, risks inflicting further psychological harm on a victim and falsely (and in some cases dangerously) reviving hope in a victim that the abusive behaviour will cease.

Sexual and family violence offenders will therefore be asked to create a statement of responsibility wherein they acknowledge:

- the abuse was wrong, including any pattern or repeat of abusive behaviour that has occurred;
- that the abuse is their responsibility to shoulder, not the victim's;
- their willingness to attend closely to a victim's voice and accept the impacts their abuse has had on the victim and any others;
- their willingness to become accountable for their actions,
- their willingness to consider ways for making amends including making a commitment to sustained behaviour change.

The preparation of a suitable responsibility statement may take considerable time and in most cases will require the offender to engage in therapeutic and or educational work to better understand the fuller implications and consequences of their abusive actions.

As previously indicated, supporters of victims and offenders in a conference must be individually assessed as suitable in their ability to condemn the offending behaviour,

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encourage offenders to take responsibility and enhance the experience of accountability for victims in the process.

Before decisions are made about the non-suitability of a matter, the RJU will endeavour to contact victims and consult them about the risks and consider where possible, and in accordance with victim wishes, whether additional measures could be used that would mitigate risk sufficiently to allow the process to continue.

The convenor of a sexual and/or family violence matter will work to achieve a comprehensive understanding of the safety needs and motivations of all participants and relevant others and appropriate knowledge of any pre-existing safety plans. If no safety plan exists, the convenor will work with the victim, offender and their relevant support networks to construct individual safety plans that are relevant to their needs generally and a further plan specifically in relation to the RJ conferencing process. It will also be considered important to connect the offender to formal and informal supports who can help them maintain an adherence to their own 'safety plan' for promoting non-violence and respectful behaviour as well placing a focus on their own wellbeing needs.

If no support networks exist, the priority for the convenor will be, wherever possible, to connect the victim and the offender with adequate support, both professional and informal who can continue to provide support after the RJ conference and any related agreement has expired. A convenor will contact participants and their supporters to monitor safety throughout the RJ process.

Choice of venue, separate entry and exit points and inclusion of participants, (which may include the police informant who originally attended the incident) are all further considerations which can help meet the safety needs of participants in the process.

Where one or more participants is detained, conferences will of necessity be held at the ACT's Correctional Detention facilities (ie the Alexander Maconochie Centre or Bimberi). ACT Corrective Services and Child and Youth Protection Services will be important providers of support for safe and dignified conferencing in custodial settings.

The conference plan will include alternative structures for dialogue where it is not appropriate for offenders to be detailing embarrassing or humiliating aspects of the perpetration of the offence. This is designed to avoid the victim re-experiencing trauma.

Careful assessment of all participants being considered for inclusion in a conference will ensure that all included 'supporters' recognise the seriousness of sexual and family violence offences, and do not express attitudes that unwittingly or otherwise, minimise, justify, condone the offending behaviours or blame the victim.

When a matter is ready for conference a convenor and or their co-convenor/s and/or Indigenous Guidance Partner (the conferencing team) will meet with the manager or senior convenors in the manager's absence to present the information relating to victim and offender readiness including risk assessment, suitability findings, conference and safety plans. This evidence that a matter is ready is required before the manager signs the form to call a conference. If the manager decides that RJ is suitable for an offence, they must ask for evidence of informed consent from the eligible victim and/or parent and the eligible offender. Reasonable steps must have been taken to explain RJ to each eligible victim and/or parent and the offender, including limitations of privacy, prior to receiving their informed consent as per s32A of the [Act](#).

8 Stage 2 – the conference

Conferences will be conducted in a way which promotes the right of victims to participate and be empowered in their own justice process. The aims of the conference include:

- the person harmed and other key participants hearing the offender's acceptance of responsibility for the offence and any broader pattern of harmful behaviour
- the person harmed having a voice in ways that allow them to express what matters most to them about what happened, including having the opportunity to ask questions of the person responsible.
- participants hearing what impact the offence has had on victims and others;
- participants, in particular the person harmed and the person responsible voicing what they believe needs to happen to repair the harm caused, and
- the person responsible proposing ways they can demonstrate a practical and measurable commitment to non-violence.

Before a restorative justice conference begins, the convenor must again ensure that reasonable steps are taken to explain to each person who is to take part in the conference (in language each can easily understand), the nature of their participation under s 45 of the [Act](#).

Restorative justice conferences are conducted in any form (or combination of forms) that, in the convenor's opinion, best facilitates the safety of participants, the meaningful interaction between participants, the principles of these guidelines and the promotion of the objects of the Act.

Conferences may be face to face meetings between victims, offenders and their respective supporters or they may take place by an indirect exchange of information between the participants. The use of recordings, electronic or written communication strategies where the convenor is an intermediary are examples of indirect options.

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For face to face conferences, the venue will be chosen for safety and convenience with the victim's needs prioritised, however it is the convenor that has the ultimate responsibility to decide on the most appropriate form of the conference. The victim, the offender and their chosen suitable supporters will be prepared separately ahead of the conference to ensure that they have an opportunity to discuss any relevant immediate issues, and to be reminded of their option to pull out of the conference if they no longer feel it would be safe or of benefit.

Dialogue about the offence as delivered by the offender, will be modified in accordance with how much detail the victim wishes to hear them describe. It is anticipated that the focus for the conference offence narrative would often be more heavily weighted to the period immediately prior to the offence occurring and after the offence occurring. This is designed to support the acknowledgment of any grooming or pre-mediation and cover up or silencing tactics used by the offender and to avoid the victim suffering the embarrassment of a detailed description of the actual offence. There may be occasions when a victim wishes for a detailed account to be provided.

During a restorative justice conference, the Convenor will ensure that:

- appropriate safety strategies are identified and in place including separate entry and exit points for victims and offenders;
- participants behave in a manner that promotes safety and respectful communication;
- breaks in proceedings occur as requested by participants or at the Convenor's discretion;
- the process is appropriate and responsive to the culture of participants, particularly the required participants. Convenors should identify whether particular cultural awareness or practices or needs can be accommodated within the process. A range of strategies can be used, including:
 - seeking advice from elders or cultural advisors (who may attend the conference)
 - using convenors of the same ethnicity or cultural group as the participants where possible
 - ensuring convenors who are aware of and know how to accommodate participant's cultural practices in a way that supports victim empowerment
 - using an appropriately trained interpreter
 - holding the conference at a culturally significant venue, and/ or

- ensuring that participants are aware of cultural differences and how these will be considered
- the offender acknowledges and takes responsibility for the offence that was referred to restorative justice and about any patterns of harmful or coercive behaviour that are characteristic of their use of abuse and violence in a relationship or in their offending patterns generally if no relationship to the victim/survivor exists;
- the victim is invited to discuss the referred offence and their experience of harm by the offender and the consequences of this behaviour upon them and others;
- the victim and offender's supporters are asked to talk about the impact of the referred offence and any patterns of abuse, coercion and control and/or violence used by the offender in the offender's relationship with the victim if applicable;
- they speak with the victim immediately after the conference to assess if there are any safety concerns or whether the victim requires any support;
- they speak with the offender immediately after the conference to assess if there are any safety concerns or whether the offender requires support.

9 Agreements

In the final stage of a conference, participants will consider whether a formal agreement would be of benefit for the victim and offender. Discussions about potential agreements will have been considered throughout the preparation process to ensure proposals are achievable, realistic and measurable. Agreements may include measures to repair the harm caused and/or measures for the offender to cease their offending behaviour. RJ agreements, while monitored closely, cannot be enforced by law, unless a judicial officer makes completion of the RJ agreement a condition of a Good Behaviour Order. This is due to the voluntary nature of participation. Responsibility for fulfilling tasks set out in an agreement lies with the offender.

RJ agreements should be reasonable and not require the offender to do anything unlawful. RJ agreements should not be degrading or humiliating to the offender or anyone else. RJ agreements must be for a term of no longer than 6 months duration from the date the agreement is made or at a later agreed starting date.

For sexual and family violence offences, there will be an optional two staged agreement phase. The first phase may involve an agreement known as an interim agreement. It will be for a period of time that meets the needs of the victim but

would not be longer than four weeks. This will be signed by the offender and their supporters at the conference. The 'cooling off' period is provided to allow the victim time to consider the terms of the agreement and to seek appropriate advice on its content and/or request changes prior to the victim signing the agreement. An interim agreement becomes a final agreement when the victim signs the agreement.

10 Stage 3 - post conference

Following the completion of a conference the convenor will:

- conduct an immediate de-brief with the required participants and their supporters wherever possible to elicit feedback about their conference experience and to address any concerns and safety issues.
- actively encourage the victim to continue to access counselling or support;
- encourage the offender to continue to access counselling or support;
- actively encourage the participants to seek advice, including legal where appropriate, if they haven't already;
- adjust an agreement if the victim, after consideration and/or receiving advice, legal or otherwise, in a cooling off period, wishes to change the agreement;
- consult with each of the required participants prior to the victim signing and formalising an agreement;
- review the safety plan in light of what has been discussed at the conference and agreed to in any interim and final agreement;
- contact the victim the day after the conference (and at regular intervals thereafter) to determine if:
 - they identified any comments or signals made by the offender during the conference that made them feel unsafe
 - they require any support
 - the safety plan needs to be reviewed and updated with reference to the proposed agreement
- contact the offender the day after the conference (and at regular intervals thereafter) to:
 - determine if they require any support
 - determine if they identified any issues from the conference and how these may be best managed
 - put in place any additional support they think may be required to assist the offender to comply with the proposed agreement

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- contact respective supporters to gauge their sense of satisfaction and safety of participants, including themselves, following the conference;
- maintain regular contact with the victim and offender and their key supporters throughout the 'cooling off' period;
- as part of ongoing monitoring of safety, periodically contact any relevant agency to check that the offender has not come to the attention of police or breached any court orders or conditions of court orders; and
- closely monitor compliance with the interim agreement before inviting the victim to sign the final agreement;
- continue monitoring safety and compliance throughout the term of the agreement.

11 Amending restorative justice agreements

RJ agreements may be amended on application of a required participant or the convenor's initiative, as per s 55 of the [Act](#)

The content of an agreement may be amended if, after the agreement is made, the convenor considers it is detrimental to the victim or the safety of children in their care.

Agreements cannot be amended due to a change in the offender's, victim's or other participant's attitude to compliance with the agreement.

12 Monitoring of agreements

Monitoring of agreements is an integral part of the RJ process. The director-general, (RJ) may do anything reasonable to check an offender's compliance with a RJ agreement. If the director-general is satisfied on reasonable grounds that there has been a significant failure to comply with a RJ agreement, the director-general (RJ) must report the non-compliance to the referring entity.

The referring entity then decides on an appropriate course of action, if any in response to the non-compliance.

A victim of a sexual and/or family violence offence will never be asked to monitor and/or verify an offender's fulfilment of an agreement task. Supporters of an offender may agree to monitor, encourage and support an offender's fulfilment of an agreement task where it is safe to do so. The convenor has the responsibility for making formal verifications of an offender's compliance with a RJ agreement and verification pathways should be made clear at the conference when the agreement is being constructed and before required participants sign the agreement.

13 Content of reports to referring entities

The Act imposes significant penalties for disclosure of personal information obtained in exercising functions under the Act and creates prohibitions on disclosure of information in civil proceedings and criminal proceedings (other than those under the Act). The content of reports to referring entities following a conference involving a family violence offence will be brief and worded carefully to protect the safety of conference participants. Reports will indicate that an offence or ‘matter’ is found suitable or not suitable rather than reporting findings of an individual’s suitability.

The reports will restrict the disclosure of a participant’s personal information, but will include any agreement formed at the conference and information consistent with providing a basic context of the outcome of the conference. Further comments can only be added with the consent of all parties.

14 Conclusion of restorative justice process

At the conclusion of the restorative justice process, the Convenor will;

- Inform the victim, the offender and the referring entity of the level of compliance with the final agreement.
- Review, in consultation with the victim and support worker or agency, the victim’s wellbeing, any safety plan needs as well as any further appropriate services for support or counselling if needed.
- Review, in consultation with the offender and support worker or agency, the offender’s wellbeing, any safety plan needs as well as any further appropriate services for support or counselling if needed.